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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,914	12/05/2001	Shanker Gupta	9022.30	6114
20792	7590	01/03/2006	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			CHOI, FRANK I	
PO BOX 37428			ART UNIT	
RALEIGH, NC 27627			PAPER NUMBER	

1616

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,914

Applicant(s)

GUPTA ET AL.

Examiner

Frank I. Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-31,33,34 and 36-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-31,33,34,36-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29-31,33,34,36,37-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as follows:

Claims 29-31,33,34,36,37-41 contain the limitation "wherein said particles". There is insufficient antecedent basis for this limitation in the claim as the limitation refers to "a pharmacologically acceptable lipoid as a hydrophobic phase dispersed as particles in said hydrophilic phase" which was deleted from the claims. Examiner suggests reinserting said limitation and "wherein said lipoid is".

Claims 31, 37 recites "about 0.01" . There is insufficient antecedent basis for this limitation as claim 29 recites "0.01 . . ." The limitation "about" includes amounts below 0.01 which is not within the scope of the range recited in claim 29. Examiner suggests using "about 0.01" in claim 29 with respect to the ethanol.

Claims 34, 37 recite "about 1 . . . percent". There is insufficient antecedent basis for this limitation as claim 29 recites "1 . . . percent". The limitation "about" includes amounts below 1% which is not within the scope of the range recited in claim 29. Examiner suggests using "about 1" in claim 29.

Claims 31, 37 recite “solvent is ethanol”. There is insufficient antecedent basis for this limitation as claim 29 recites “ethanol” and deleted the limitation “solvent”. Examiner suggest “wherein . . . ethanol is present at about . . .” in claim 31 and 37.

Claims 33, 37 recite “surfactant is egg phospholipid”. There is insufficient antecedent basis for this limitation as claim 29 recites “egg phospholipid” and deleted the limitation “surfactant”. Examiner suggest inserting “a surfactant to stabilize said emulsion composition; where in said surfactant is selected from egg phospholipids” in claim 29 and in claims 33, 34 reciting “wherein . . . egg phospholipid is present . . .”.

Claim 37 recites “said isotonic agent is glycerin”. There is insufficient antecedent basis for this limitation as claim 29 recites “glycerin” and deleted the limitation “isotonic agent”. Examiner suggests “wherein . . . glycerin is present” in claim 37.

Examiner notes that the above suggestions may be modified as desired so long as the antecedent basis issues are addressed and no other 112 paragraphs issues result as a result of the modification.

Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a flexible schedule. However, Examiner may generally be reached Monday-Friday, 8:00 am – 5:30 pm (EST), except the first Friday of the each biweek which is Examiner’s normally scheduled day off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner’s Supervisor, Mr. Gary Kunz, can be reached at 571-272-0887. Additionally, Technology Center 1600’s Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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FIC

December 27, 2005

JMCh

Alton P. 700
Primary Examiner
A.U. 1616